

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

RODGER D. MITCHELL,

Petitioner,

v. Civil Action No.: 2:12-2149

DAVID R. BALLARD, Warden,
Mount Olive Correctional Complex,

Respondent.

MEMORANDUM OPINION AND ORDER

Pending is a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, filed June 14, 2012.

This action was previously referred to Mary E. Stanley, United States Magistrate Judge, who, on July 12, 2012, submitted her Proposed Findings and Recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B). The magistrate judge recommends that the petition be dismissed without prejudice inasmuch as petitioner has not exhausted his state remedies.

On July 20, 2012, the court received petitioner's objections. The objections demonstrate petitioner has failed to exhaust his state court remedies. It does not appear that his further attempts to exhaust would be futile. He is thus

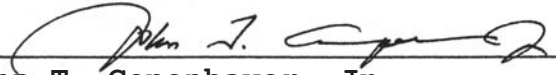
required to pursue the final adjudication of his state habeas claims prior to seeking relief in this court pursuant to section 2254. The objections are not meritorious.

Based upon the foregoing discussion, it is ORDERED that:

1. The findings made in the Proposed Findings and Recommendation of the magistrate judge be, and they hereby are, adopted by the court; and
2. The section 2254 petition, and this action, be, and they hereby are, dismissed without prejudice.

The Clerk is directed to forward copies of this written opinion and order to all counsel of record, any unrepresented parties, and the magistrate judge.

DATED: September 24, 2012



John T. Copenhaver, Jr.
United States District Judge